

# GIDEON KRACOV

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March 11, 2015

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Thomas Tuttle  
CEO  
Insul-Therm International, Inc.  
Southern CA-Los Angeles Office  
6651 E. 26th Street  
City of Commerce, CA 90040

David Cowan  
President  
Insul-Therm International, Inc.,  
6651 E. 26th Street  
City of Commerce, CA 90040

Teresa G Nichols  
Agent for Service  
Insul-Therm International, Inc.  
6333 Corsair St.  
City of Commerce, CA 90040

DEPT. OF JUSTICE - ENRD  
ENVIRONMENT DIVISION  
15 MAR 17 P1:22

**Re: Notice of Violations and Intent to Sue Under the Federal Water Pollution Control Act**

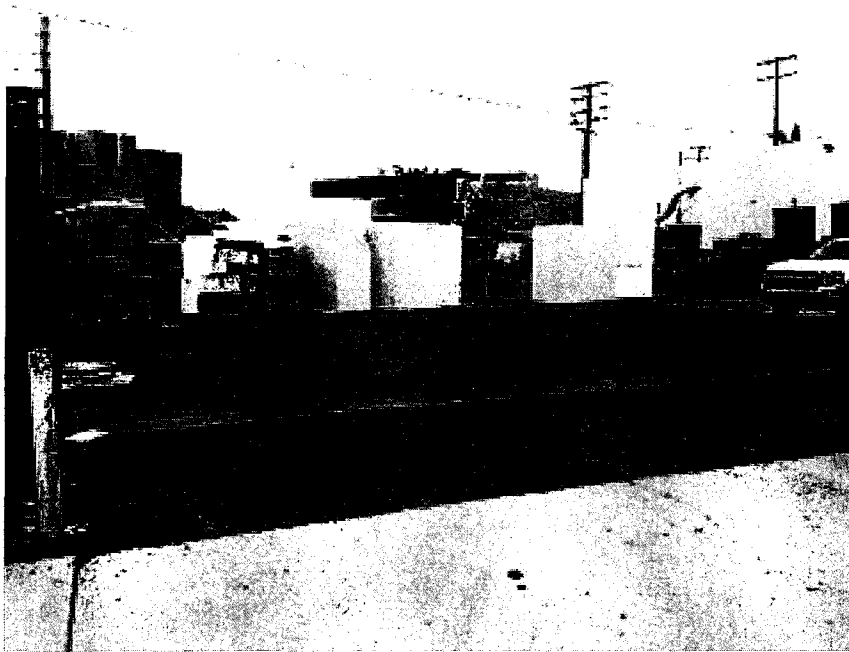
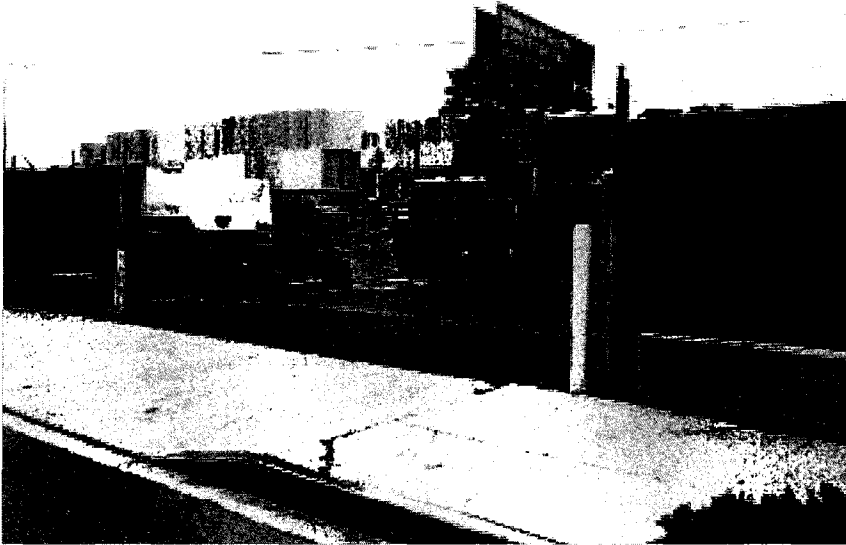
Dear Mr. Tuttle, Mr. Cowan & Ms. Nichols:

I am writing on behalf of East Yard Communities for Environmental Justice ("EYCEJ") with regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act") that EYCEJ believes are occurring at the Insul-Therm International, Inc. facility located at 6651 E 26th St, Los Angeles, California 90040 ("Facility").

Large stacks of Insul-Therm materials are stored outside and uncovered, leaving them exposed to storm water. *When it rains, EYCEJ is informed and believes that contaminated storm water pours off of these open-air materials and into E. 26th St., and then ultimately into the Los Angeles River, all with absolutely no compliance with governing stormwater regulations.*<sup>1</sup>

<sup>1</sup> The information regarding which water body the Facility discharges to was obtained through research conducted with the City of Commerce's Department of Public Works and investigation into the facility address and storm

Here are some recent photographs taken of the Facility from E. 26th St.:



EYCEJ is an environmental health and justice not for profit organization headquartered at 2317 Atlantic Bl., Commerce, California 90040. <http://eycej.org/about/contact-us/>. EYCEJ has members living in the community adjacent to the Facility and the Los Angeles River Watershed.

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drains located in front of the Facility on E. 26th. The drains may initially lead to the Rio Hondo Channel, but eventually end up in the Los Angeles River. In the alternative, the Facility may discharge to the San Gabriel River.

EYCEJ and its members are deeply concerned with protecting the environment in and around their communities, including the Los Angeles River Watershed. It cares about the City of Commerce and the environment. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Insul-Therm").

This letter addresses Insul-Therm's failure to comply with General Industrial Storm Water Permit. The Industrial Storm Water General Permit Order 97-03-DWQ ("General Permit") is a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges associated with 10 broad categories of industrial activities.<sup>2</sup> Some of these categories include: Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N); manufacturing facilities; Certain facilities (often referred to as "light industry") where industrial materials, equipment, or activities are exposed to storm water.<sup>3</sup>

The General Permit requires the implementation of management measures that will achieve the performance standard of best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT). The General Permit also requires the development of a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring plan. Through the SWPPP, sources of pollutants are to be identified and the means to manage the sources to reduce storm water pollution are described.

Insul-Therm, as a manufacturer of insulation products for the industrial and commercial market, clearly falls within the permitting requirements of the General Permit. ***Upon information and belief, EYCEJ alleges that Insul-Therm has failed entirely to register the Facility under the General Permit program, as required, and therefore has and continues to be engaged in ongoing violations of the substantive and procedural requirements of the General Permit.***

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Insul-Therm is hereby placed on formal notice by EYCEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, EYCEJ intends to file suit in federal court against Insul-Therm under Section 505(a) of the Clean Water Act (33 U.S.C.

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<sup>2</sup> On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

<sup>3</sup> See NPDES General Permit No. CAS000001, Attachment 1.  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/induspmnt.pdf](http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmnt.pdf)

§ 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On information and belief, EYCEJ alleges that industrial activities at the site include developing products for Gas Liquefaction Plants (LNG, NGL, LPG), Ethylene Facilities, Fertilizer Plants and other industries requiring extreme temperature management. Insul-Therm manufactures insulation products from materials such as: styrofoam, fiberglass, mineral wool, aluminum, adhesives, foams, and other sealants, among other things. On information and belief, EYCEJ alleges that storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur and/or where materials are stored. On information and belief, the outfalls discharge into the County of Los Angeles or City of Commerce Flood Control District storm system, which discharges into the Los Angeles River.

The Regional Board has identified beneficial uses of the Los Angeles River and established water quality standards for it in the “Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties”, generally referred to as the Basin Plan. See [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml). The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation and commercial and sport fishing.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-16. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-11. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-8. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-9.

The Basin Plan also provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...” *Id.* at 3-8. The Basin Plan provides a Maximum Contaminant Level (“MCL”) for aluminum of 1 mg/L.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”), for copper of 0.013 mg/L (CMC) and for lead of 0.065 mg/L (CMC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).<sup>4</sup>

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>5</sup> The following benchmarks have been established: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; zinc – 0.20 mg/L; lead – 0.182 mg/L; copper – 0.025 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L.

## **II. Alleged Violations of the Clean Water Act and the General Permit.**

### ***A. Failure to File a Notice of Intent and Obtain Authorization for Storm Water Discharges***

In 1972, the Clean Water Act (CWA) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (U.S. EPA) published final regulations that establish application requirements for storm water permits. The regulations require that storm water associated with industrial activity (storm water) that discharges either directly to surface waters or indirectly through municipal separate storm sewers must be regulated by an NPDES permit.

To obtain authorization for continued and future storm water discharge under the General Permit, each facility operator must submit a Notice of Intent (NOI). This General Permit generally requires facility operators to: (1) Eliminate unauthorized non-storm water discharges;

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<sup>4</sup> These values for zinc, copper and lead are also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

<sup>5</sup> The Benchmark Values can be found at: [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) and <http://cwea.org/p3s/documents/multi-sectorrev.pdf>.

(2) Develop and implement a storm water pollution prevention plan (SWPPP); and (3) Perform monitoring of storm water discharges and authorized non-storm water discharges.

***EYCEJ completed a thorough investigation and conducted research at the Los Angeles Regional Water Quality Control Board (LARWQCB) in order to identify whether Insul-Therm had submitted an NOI, as required under the General Permit. EYCEJ failed to find any documents or data indicating Insul-Therm had obtained authorization to discharge storm water. As a result, Insul-Therm is and continues to be in violation of the filing and authorization requirements of the General Permit and other requirements therein.***

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Insul-Therm is subject to penalties for violations of the General Permit and the Act since March 9, 2010. Attachment A, attached hereto, sets forth each of the specific rain dates on which EYCEJ alleges that Insul-Therm has discharged storm water in violation of the General Permit.<sup>6</sup>

***B. Failure to Sample and Analyze for Mandatory Parameters***

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.*

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or Oil & Grease. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D.

EYCEJ’s failure to find any reports or data for Insul-Therm at the LARWQB indicates that you have failed to analyze for the required parameters in each and every storm water event since the Facility began operations. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Insul-Therm is subject to penalties for violations of the General Permit and the Act since March 9, 2010.

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<sup>6</sup> The rain dates are all the days when an average of 0.1” or more rain fell as measured by a weather station located in Long Beach, approximately 18 miles away from the Facility. The weather data can be obtained at <http://www.ipm.ucdavis.edu/WEATHER/SITES/losangeles.html> (Last accessed on March 10, 2015).

**C.     *Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non- water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

***There is no data indicating that Insul-Therm has ever monitored their storm water or submitted Annual Reports, in accordance with the General Permit. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the open-air materials and directly into E 26th St., and then into the Los Angeles River. In the alternative, the Facility has failed to implement an appropriate program that shows whether or not they are in compliance.***

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Insul-Therm is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since March 9, 2010.

**D.     *Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan***

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant

spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

***EYCEJ's visit to the Facility indicates that Insul-Therm has been operating with an inadequately developed and implemented SWPPP in violation of the requirements set forth above. Insul-Therm has failed to evaluate the effectiveness of its BMPs and to create a SWPPP as required under the General Permit. Anyone who sees this site can see that the SWPPP and BMPs are inadequate.***

Insul-Therm has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 9, 2010 , at the very latest, and will continue to be in violation every day that Insul-Therm fails to prepare, implement, review, and update an effective SWPPP. Insul-Therm is subject to penalties for violations of the Order and the Act occurring since March 9, 2010.

#### ***E. Failure to File Annual Reports***

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, Insul-Therm has failed to submit and certify any Annual Reports showing that the Facility was in compliance with the General Permit. Consequently, Insul-Therm has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time Insul-Therm failed to submit. Insul-Therm is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least March 9, 2010.

### **III. Persons Responsible for the Violations.**

EYCEJ puts Insul-Therm, Thomas Tuttle, David Cowan and Teresa G. Nichols on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, EYCEJ puts Insul-Therm on notice that it intends to include those persons in this action.



**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of EYCEJ is as follows:

Mark Lopez  
EYCEJ  
2317 Atlantic Bl.  
Commerce, CA 90040  
323-263-2113

**V. Counsel.**

EYCEJ has retained counsel to represent it in this matter. Please direct all communications to:

Gideon Kracov  
Law Office of Gideon Kracov  
801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017  
gk@gideonlaw.net  
213-629-2071

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Insul-Therm to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, EYCEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

EYCEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. EYCEJ intends to file a citizen suit under Section 505(a) of the Act against Insul-Therm and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, EYCEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue discussions without litigation, please initiate those discussions within the next 20 days so they may be completed before the end of the 60-day notice period. EYCEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Gideon Kracov

## **SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**ATTACHMENT A  
RAIN DATES  
INSUL-THERM COMMERCE, CA**

4/5/2010	2/15/2012
4/12/2010	2/27/2012
10/6/2010	3/17/2012
11/20/2010	3/18/2012
12/10/2010	3/25/2012
12/17/2010	4/10/2012
12/18/2010	4/11/2012
12/19/2010	4/13/2012
12/20/2010	4/25/2012
12/21/2010	4/26/2012
12/22/2010	7/25/2012
12/23/2010	11/29/2012
12/24/2010	11/30/2012
12/26/2010	12/2/2012
12/27/2010	12/3/2012
1/30/2011	12/13/2012
2/16/2011	12/24/2012
2/18/2011	12/26/2012
2/19/2011	12/29/2012
2/25/2011	1/24/2013
2/26/2011	1/25/2013
3/20/2011	2/8/2013
3/21/2011	2/19/2013
3/23/2011	3/8/2013
3/25/2011	5/6/2013
3/27/2011	5/7/2013
5/17/2011	11/29/2013
10/4/2011	12/19/2013
10/5/2011	2/6/2014
11/4/2011	2/27/2014
11/6/2011	2/28/2014
11/12/2011	3/1/2014
11/20/2011	4/1/2014
12/12/2011	4/2/2014
1/21/2012	4/25/2014
1/23/2012	11/30/2014

12/2/2014  
12/3/2014  
12/12/2014  
12/17/2014  
1/10/2015  
1/11/2015  
2/23/2015  
3/2/2015

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March 11, 2015

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Lawrence B Franklin  
Owner & Agent for Service  
Franklin Truck Parts, Inc.  
6925 Bandini Blvd.  
Commerce, California 90040

Tony Barrera  
Facility Manager  
Franklin Truck Parts, Inc.  
6925 Bandini Blvd.  
Commerce, California 90040

**Re: Notice of Violations and Intent to Sue Under the Federal Water Pollution Control Act**

Dear Mr. Franklin & Mr. Barrera:

I am writing on behalf of East Yard Communities for Environmental Justice ("EYCEJ") with regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act") that EYCEJ believes are occurring at the Franklin Truck Parts, Inc. ("Franklin") facility located at 6925 Bandini Blvd., Commerce, California 90040 ("Facility").

Franklin materials are stored outside and uncovered, leaving them exposed to storm water. *When it rains, EYCEJ is informed and believes that contaminated storm water pours off of these open-air materials and into Bandini Blvd., and then ultimately into the Los Angeles River, all with absolutely no compliance with governing stormwater regulations.*<sup>1</sup>

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<sup>1</sup> The information regarding which water body the Facility discharges to was obtained through research conducted with the City of Commerce's Department of Public Works and investigation into the facility address and storm drains located in front of the Facility on Bandini Blvd. The drains may initially lead to the Rio Hondo Channel, but eventually end up in the Los Angeles River. In the alternative, the Facility may discharge to the San Gabriel River.

Here is a recent photographs taken of the Facility:



EYCEJ is an environmental health and justice not for profit organization headquartered at 2317 Atlantic Bl., Commerce, California 90040. <http://eycej.org/about/contact-us/>. EYCEJ has members living in the community adjacent to the Facility and the Los Angeles River Watershed. EYCEJ and its members are deeply concerned with protecting the environment in and around their communities, including the Los Angeles River Watershed. It cares about the City of Commerce and the environment, and knows you do too. You are a respected member of the community, but must do better on stormwater management. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “Franklin”).

This letter addresses Franklin’s failure to comply with General Industrial Storm Water Permit. The Industrial Storm Water General Permit Order 97-03-DWQ (“General Permit”) is a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges associated with 10 broad categories of industrial activities.<sup>2</sup> Some of these categories include: Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N); manufacturing facilities;

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Franklin, as a manufacturer of insulation products for the industrial and commercial market, clearly falls within the permitting requirements of the General Permit. ***Upon information and belief, EYCEJ alleges that Franklin has failed entirely to register the Facility under the General Permit program, as required, and therefore has and continues to be engaged in ongoing violations of the substantive and procedural requirements of the General Permit.***

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As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Franklin is hereby placed on formal notice by EYCEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, EYCEJ intends to file suit in federal court against Franklin under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On information and belief, EYCEJ alleges that industrial activities at the site include full service warehouse distribution of truck brake, steering and suspension parts. On information and belief, EYCEJ alleges that storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur and/or where materials are stored. The outfalls discharge into the County of Los Angeles or City of Commerce Flood Control District storm system, which discharges into the Los Angeles River.

The Regional Board has identified beneficial uses of the Los Angeles River and established water quality standards for it in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. See [http://www.waterboards.ca.gov/losangeles/water\\_issues/](http://www.waterboards.ca.gov/losangeles/water_issues/)

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<sup>3</sup> See NPDES General Permit No. CAS000001, Attachment 1.  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/induspmt.pdf](http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf)

[programs/basin\\_plan/basin\\_plan\\_documentation.shtml](#). The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation and commercial and sport fishing.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-16. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-11. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-8. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-9.

The Basin Plan also provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...” *Id.* at 3-8. The Basin Plan provides a Maximum Contaminant Level (“MCL”) for aluminum of 1 mg/L.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”), for copper of 0.013 mg/L (CMC) and for lead of 0.065 mg/L (CMC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).<sup>4</sup>

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

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<sup>4</sup> These values for zinc, copper and lead are also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>5</sup> The following benchmarks have been established: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; zinc – 0.20 mg/L; lead – 0.182 mg/L; copper – 0.025 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L.

## **II. Alleged Violations of the Clean Water Act and the General Permit.**

### **A. *Failure to File a Notice of Intent and Obtain Authorization for Storm Water Discharges***

In 1972, the Clean Water Act (CWA) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (U.S. EPA) published final regulations that establish application requirements for storm water permits. The regulations require that storm water associated with industrial activity (storm water) that discharges either directly to surface waters or indirectly through municipal separate storm sewers must be regulated by an NPDES permit.

To obtain authorization for continued and future storm water discharge under the General Permit, each facility operator must submit a Notice of Intent (NOI). This General Permit generally requires facility operators to: (1) Eliminate unauthorized non-storm water discharges; (2) Develop and implement a storm water pollution prevention plan (SWPPP); and (3) Perform monitoring of storm water discharges and authorized non-storm water discharges.

***EYCEJ completed a thorough investigation and conducted research at the Los Angeles Regional Water Quality Control Board (LARWQCB) in order to identify whether Franklin had submitted an NOI, as required under the General Permit. EYCEJ failed to find any documents or data indicating Franklin had obtained authorization to discharge storm water. As a result, Franklin is and continues to be in violation of the filing and authorization requirements of the General Permit and other requirements therein.***

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Franklin is subject to penalties for violations of the General Permit and the Act since March 9, 2010.<sup>6</sup>

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<sup>5</sup> The Benchmark Values can be found at: [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) and <http://cwea.org/p3s/documents/multi-sectorrev.pdf>.

<sup>6</sup> The rain dates are all the days when an average of 0.1” or more rain fell as measured by a weather station located in Long Beach, approximately 18 miles away from the Facility. The weather data can be obtained at <http://www.ipm.ucdavis.edu/WEATHER/SITES/losangeles.html> (Last accessed on March 10, 2015).



***B. Failure to Sample and Analyze for Mandatory Parameters***

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.*

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or Oil & Grease. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D.

***EYCEJ’s failure to find any reports or data for Franklin at the LARWQB indicates that you have failed to analyze for the required parameters in each and every storm water event since the Facility began operations. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Franklin is subject to penalties for violations of the General Permit and the Act since March 9, 2010.***

***C. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non- water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

***There is no data indicating that Franklin has ever monitored storm water or submitted Annual Reports, in accordance with the General Permit. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the open-air materials and directly into Bandini Blvd., and then into the Los Angeles River. In the alternative, the Facility has failed to implement an appropriate program that shows whether or not they are in compliance.***

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act,

Franklin is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 9, 2010.

***D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan***

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

***EYCEJ's visit to the Facility indicates that Franklin has been operating with an inadequately developed and implemented SWPPP in violation of the requirements set forth above. Franklin has failed to evaluate the effectiveness of its BMPs and to create a SWPPP as required under the General Permit. Anyone who sees this site can see that the SWPPP and BMPs are inadequate.***

Franklin has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 9, 2010, at the very latest, and will continue to be in violation every day that Franklin fails to prepare, implement, review, and update an effective SWPPP. Franklin is subject to penalties for violations of the Order and the Act occurring since March 9, 2010.

***E. Failure to File Annual Reports***

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, Franklin has failed to submit and certify any Annual Reports showing that the Facility was in compliance with the General Permit. Consequently, Franklin has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time Franklin failed to submit. Franklin is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least March 9, 2010.

**III. Persons Responsible for the Violations.**

EYCEJ puts Franklin, Lawrence Franklin and Tony Barrera on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, EYCEJ puts Franklin on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of EYCEJ is as follows:

Mark Lopez  
EYCEJ  
2317 Atlantic Bl.  
Commerce, CA 90040  
323-263-2113

**V. Counsel.**

EYCEJ has retained counsel to represent it in this matter. Please direct all communications to:

Gideon Kracov  
Law Office of Gideon Kracov  
801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017  
gk@gideonlaw.net  
213-629-2071

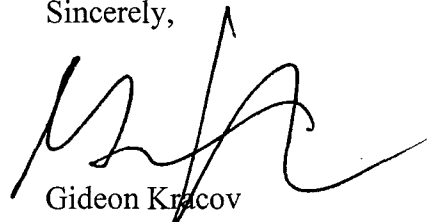
Franklin Truck Parts, Inc.  
March 11, 2015  
Page 9 of 11

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Franklin to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, EYCEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

EYCEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. EYCEJ intends to file a citizen suit under Section 505(a) of the Act against Franklin and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, EYCEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, EYCEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. EYCEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gideon Kracov', with a long, sweeping horizontal stroke extending to the right.

Gideon Kracov

Franklin Truck Parts, Inc.  
March 11, 2015  
Page 10 of 11

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**ATTACHMENT A**  
**RAIN DATES**  
**FRANKLIN TRUCK COMMERCE, CA**

4/5/2010	10/4/2011	12/29/2012
4/12/2010	10/5/2011	1/24/2013
10/6/2010	11/4/2011	1/25/2013
11/20/2010	11/6/2011	2/8/2013
12/10/2010	11/12/2011	2/19/2013
12/17/2010	11/20/2011	3/8/2013
12/18/2010	12/12/2011	5/6/2013
12/19/2010	1/21/2012	5/7/2013
12/20/2010	1/23/2012	11/29/2013
12/21/2010	2/15/2012	12/19/2013
12/22/2010	2/27/2012	2/6/2014
12/23/2010	3/17/2012	2/27/2014
12/24/2010	3/18/2012	2/28/2014
12/26/2010	3/25/2012	3/1/2014
12/27/2010	4/10/2012	4/1/2014
1/30/2011	4/11/2012	4/2/2014
2/16/2011	4/13/2012	4/25/2014
2/18/2011	4/25/2012	11/30/2014
2/19/2011	4/26/2012	12/2/2014
2/25/2011	7/25/2012	12/3/2014
2/26/2011	11/29/2012	12/12/2014
3/20/2011	11/30/2012	12/17/2014
3/21/2011	12/2/2012	1/10/2015
3/23/2011	12/3/2012	1/11/2015
3/25/2011	12/13/2012	2/23/2015
3/27/2011	12/24/2012	3/2/2015
5/17/2011	12/26/2012	

**GIDEON KRACOV**

Attorney at Law

801 South Grand Avenue  
11th Floor  
Los Angeles, California 90017

(213) 629-2071  
Fax: (213) 623-7755

gk@gideonlaw.net  
www.gideonlaw.net

March 11, 2015

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Viken Ohanesain  
President, US Polymers, Inc.  
1057 S Vail Ave.  
Montebello, CA 90640

Kevork Janessian  
Facility Operator, US Polymers, Inc.  
1057 S Vail Ave.  
Montebello, CA 90640

Vram Ohanesain  
Plant Manager, US Polymers, Inc.  
5910 Bandini Blvd.  
Commerce, CA 90040

Bob Paparisto  
Site Manager, US Polymers, Inc.  
5910 Bandini Blvd.  
Commerce, CA 90040

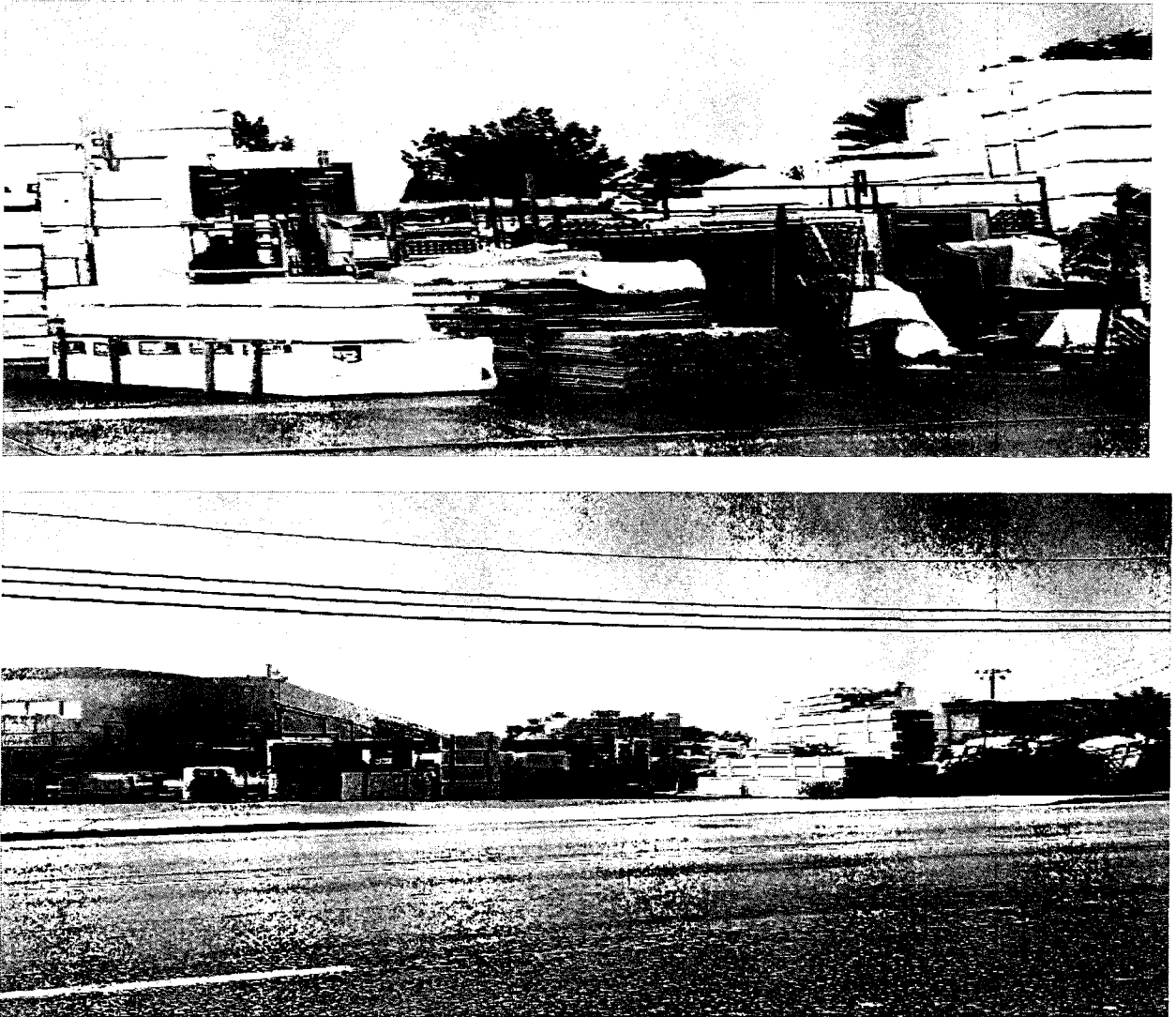
Scott Lee Shabel  
Agent for Service  
12400 Wilshire Blvd., Suite 1300  
Los Angeles, CA 90025

**Re: Notice of Violations and Intent to Sue Under the Federal Water Pollution Control Act**

Dear Mr. Ohanesain, Mr. Janessian, Mr. Ohanesain, Mr. Paparisto, Mr. Shabel:

I write on behalf of East Yard Communities for Environmental Justice ("EYCEJ") with regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act") that EYCEJ believes are occurring at the US Polymers Inc. facility located at 5910 Bandini Blvd. in Commerce, California 90040 ("Facility"). *When it rains, EYCEJ is informed and believes that polluted storm water pours off large stacks of exposed materials and directly onto Bandini Blvd., and then ultimately into the Los Angeles River, without ongoing, demonstrated*

*compliance with stormwater requirements.*<sup>1</sup> Here are some recent photos of the Facility taken from Bandini Blvd:



EYCEJ is an environmental health and justice not for profit organization headquartered at 2317 Atlantic Bl., Commerce, California 90040. <http://eycej.org/about/contact-us/>. EYCEJ has members living in the community adjacent to the Facility and the Los Angeles River Watershed. EYCEJ and its members are deeply concerned with protecting the environment in and around their communities, including the Los Angeles River Watershed. It cares about the City of Commerce and the environment. This letter is being sent to you as the responsible

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<sup>1</sup> The information regarding which water body the Facility discharges to was obtained through research conducted with the City of Commerce's Department of Public Works and investigation into the facility address and storm drains located in front of the Facility on Bandini Blvd. The drains may initially lead to Rio Hondo Channel, but eventually end up in the Los Angeles River. In the alternative, the Facility may discharge to the San Gabriel River.



owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "US Polymers").

This letter addresses US Polymers unlawful discharge of pollutants from the Facility through the City of Commerce Flood Control District storm system, which discharges into the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit").<sup>2</sup> The WDID identification number for the Facility listed on documents submitted to the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I020881. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, US Polymers is hereby placed on formal notice by EYCEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, EYCEJ intends to file suit in federal court against US Polymers under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

The State Board approved US Polymers's Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). US Polymers has certified that the Facility is classified under SIC Codes 3084 "Pipe Plastics," 3082 "Unsupported Plastics Profile Shapes," and 3087 "Compounding Purchased Plastics Resin." The Facility collects and discharges storm water from its 65,000 square foot industrial site into at least one storm drain outfall located at the Facility. On information and belief, EYCEJ alleges that industrial activities at the site include manufacturing and transferring of plastic products. On information and belief, EYCEJ alleges that storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur and/or where materials are stored. The outfalls discharge into the County of Los Angeles or City of Commerce Flood Control District storm system, which

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<sup>2</sup> On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

discharges into the Los Angeles River.

The Regional Board has identified beneficial uses of the Los Angeles River and established water quality standards for it in the “Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties”, generally referred to as the Basin Plan. See [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml). The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation and commercial and sport fishing.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-16. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-11. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-8. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-9.

The Basin Plan also provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...” *Id.* at 3-8. The Basin Plan provides a Maximum Contaminant Level (“MCL”) for aluminum of 1 mg/L.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”), for copper of 0.013 mg/L (CMC) and for lead of 0.065 mg/L (CMC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).<sup>3</sup>

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>4</sup> The following benchmarks have been established for pollutants discharged by US Polymers: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; zinc – 0.20 mg/L; lead – 0.182 mg/L; copper – 0.025 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L.<sup>5</sup>

## **II. Alleged Violations of the Clean Water Act and the General Permit.**

### ***A. Discharges in Violation of the Permit not Subjected to BAT/BCT***

US Polymers has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either

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<sup>3</sup> These values for zinc, copper and lead are also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

<sup>4</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) and  
<http://cwea.org/p3s/documents/multi-sectorrev.pdf>.

<sup>5</sup> Data shows median hardness at approximately 200 mg/L for the Los Angeles River Reach 2, which is the receiving water for US Polymers’s discharges.  
[http://www.swrcb.ca.gov/water\\_issues/programs/tmdl/docs/303dlists2006/comments/jonathan\\_bishop\\_a.pdf](http://www.swrcb.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/comments/jonathan_bishop_a.pdf)

Accordingly, since the benchmark level for zinc, lead and copper are hardness-dependent, the numbers listed here are based on a water hardness range of 175-200 mg/L [CaCO<sub>3</sub>].

directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. *See Baykeeper v. Int'l Metals Ekco, Ltd.*, 619 F.Supp.2d 936, 945 (C.D. Cal. 2009).

***US Polymers has continually failed to properly sample their storm water discharges. The only recent annual report that was filed with the water board was for the 2010-2011 reporting period. The Facility claimed that there were no qualifying storm events to sample during the 2010-2011 period. However, Attachment A below shows that there were numerous qualifying storm events reported during that year for which the Facility could have sampled. Additionally, the Facility has failed to sample and report its storm water for any reporting period following 2011. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the plastics and other materials directly onto Bandini Blvd., and then eventually into the Los Angeles River.***

***EYCEJ's investigation of the Facility indicates that Strategic has not implemented BAT and BCT at the Facility because storm water can freely flow over the plastic and other materials discharging into the storm water system and eventually into the Los Angeles River. US Polymers was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, US Polymers is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.***

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, US Polymers is subject to penalties for violations of the General Permit and the Act since March 5, 2010.

***B. Failure to Sample and Analyze for Mandatory Parameters***

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.*

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D.

***EYCEJ’s failure to find any annual reports for the 2011-2012, 2012-2013, 2013-2014 reporting periods for US Polymers at the water board indicates that you have failed to analyze for the required parameters in each of those periods.*** These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, US Polymers is subject to penalties for violations of the General Permit and the Act since March 9, 2010.

***C. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

***There is no data indicating that US Polymers has been properly monitoring their storm water and/or submitting timely Annual Reports, in accordance with the General Permit for the 2010-2011, 2011-2012, 2012-2013, 2013-2014 reporting periods. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the large stacks and other materials and directly onto Bandini Blvd., and then into the Los Angeles River.***

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, US

Polymers is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 9, 2010.

***D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan***

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

EYCEJ's visit to the Facility, as well as the review US Polymers Annual Reports indicate that US Polymers has been operating with an inadequately developed and implemented SWPPP in violation of the requirements set forth above. US Polymers has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Anyone who sees the Facility can see that the SWPPP and BMPs are inadequate.

US Polymers has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 9, 2010, at the very latest, and will continue to be in violation every day that US Polymers fails to prepare, implement, review, and update an effective SWPPP. US Polymers is subject to penalties for violations of the Order and the Act occurring since March 9, 2010.

***E. Failure to File True and Correct Annual Reports***

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

***For the last four years, US Polymers has failed to submit and certify any Annual Reports indicating that the Facility is in compliance with the General Permit.*** Consequently, US Polymers has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time US Polymers failed to submit a complete or correct report and every time US Polymers or its agents falsely purported to comply with the Act. US Polymers is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least March 5, 2010.

**III. Persons Responsible for the Violations.**

EYCEJ puts US Polymers, Viken Ohanesain, Kevork Janessian, Vram Ohanesain, Bob Paparisto, and Scott Lee Shabel on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, EYCEJ puts US Polymers on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of EYCEJ is as follows:

Mark Lopez  
EYCEJ  
2317 Atlantic Bl.  
Commerce, CA 90040  
323-263-2113

**V. Counsel.**

EYCEJ has retained counsel to represent it in this matter. Please direct all communications to:

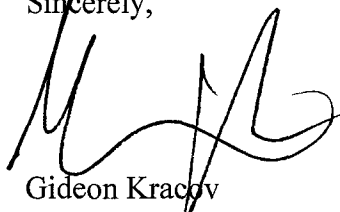
Gideon Kracov  
Law Office of Gideon Kracov  
801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017  
gk@gideonlaw.net  
213-629-2071

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects US Polymers to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, EYCEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

EYCEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. EYCEJ intends to file a citizen suit under Section 505(a) of the Act against US Polymers and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, EYCEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, EYCEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. EYCEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to be 'GK', written over the printed name 'Gideon Kracov'.

Gideon Kracov



**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**ATTACHMENT A**  
 Rain Dates, US Polymers, Commerce, California

2/5/2010	3/27/2011	2/8/2013
2/6/2010	5/17/2011	2/19/2013
2/15/2010	10/4/2011	3/8/2013
2/19/2010	10/5/2011	5/6/2013
2/23/2010	11/4/2011	5/7/2013
2/27/2010	11/6/2011	11/29/2013
3/6/2010	11/12/2011	12/19/2013
4/5/2010	11/20/2011	2/6/2014
4/12/2010	12/12/2011	2/27/2014
10/6/2010	1/21/2012	2/28/2014
11/20/2010	1/23/2012	3/1/2014
12/10/2010	2/15/2012	4/1/2014
12/17/2010	2/27/2012	4/2/2014
12/18/2010	3/17/2012	4/25/2014
12/19/2010	3/18/2012	11/30/2014
12/20/2010	3/25/2012	12/2/2014
12/21/2010	4/10/2012	12/3/2014
12/22/2010	4/11/2012	12/12/2014
12/23/2010	4/13/2012	12/17/2014
12/24/2010	4/25/2012	1/10/2015
12/26/2010	4/26/2012	1/11/2015
12/27/2010	7/25/2012	1/12/2015
1/30/2011	11/29/2012	1/13/2015
2/16/2011	11/30/2012	1/15/2015
2/18/2011	12/2/2012	1/17/2015
2/19/2011	12/3/2012	1/23/2015
2/25/2011	12/13/2010	1/24/2015
2/26/2011	12/24/2012	1/26/2015
3/20/2011	12/26/2012	1/31/2015
3/21/2011	12/29/2012	2/3/2015
3/23/2011	1/24/2013	2/6/2015
3/25/2011	1/25/2013	2/7/2015

2/8/2015	2/22/2015
2/9/2015	2/23/2015
2/10/2015	3/2/2015
2/11/2015	
2/12/2015	
2/14/2015	
2/17/2015	
2/18/2015	
2/19/2015	
2/20/2015	

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www.gideonlaw.net

March 11, 2015

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Sergio Mejia  
Facility Contact, Green Lands Metals, Inc.  
6400 Bandini Blvd.  
Commerce, California 90040

Susana Mejia  
Agent for Service  
Green Lands Metals, Inc.  
3573 Holmes Circle  
Hacienda Heights, California 91745

Nathan Mizrahi  
President, Mizrahi Metals, Inc.  
*Royal Metals*  
2182 Choral Drive  
La Habra Heights, California 90631

Robert Bouse  
Donald O. Smith Company  
Agent for Service  
5420 S Santa Fe Ave  
Vernon, California 90058

John Landis  
Donald O. Smith Company  
President  
6424 Bandini Boulevard  
Commerce, California 90040

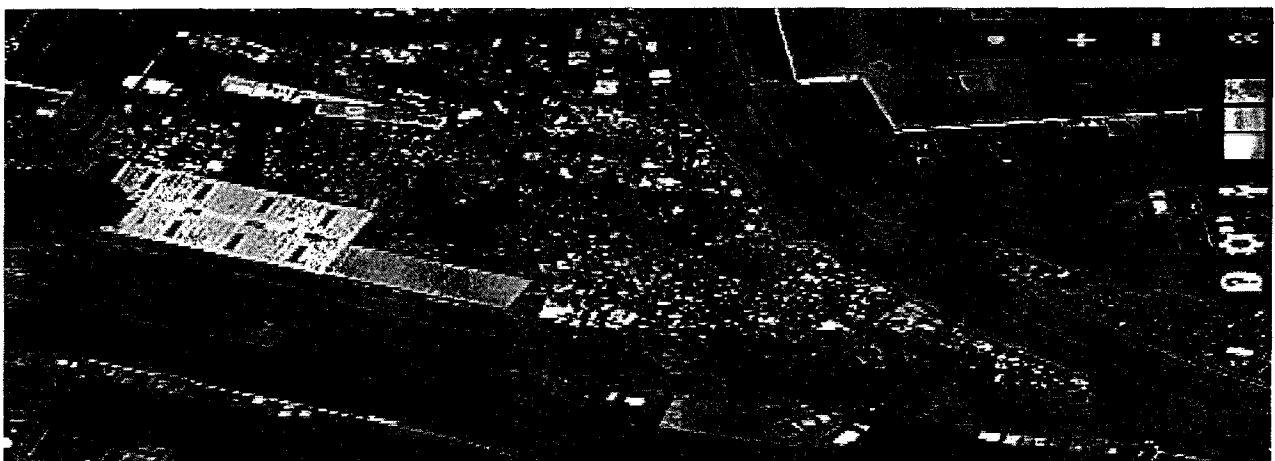
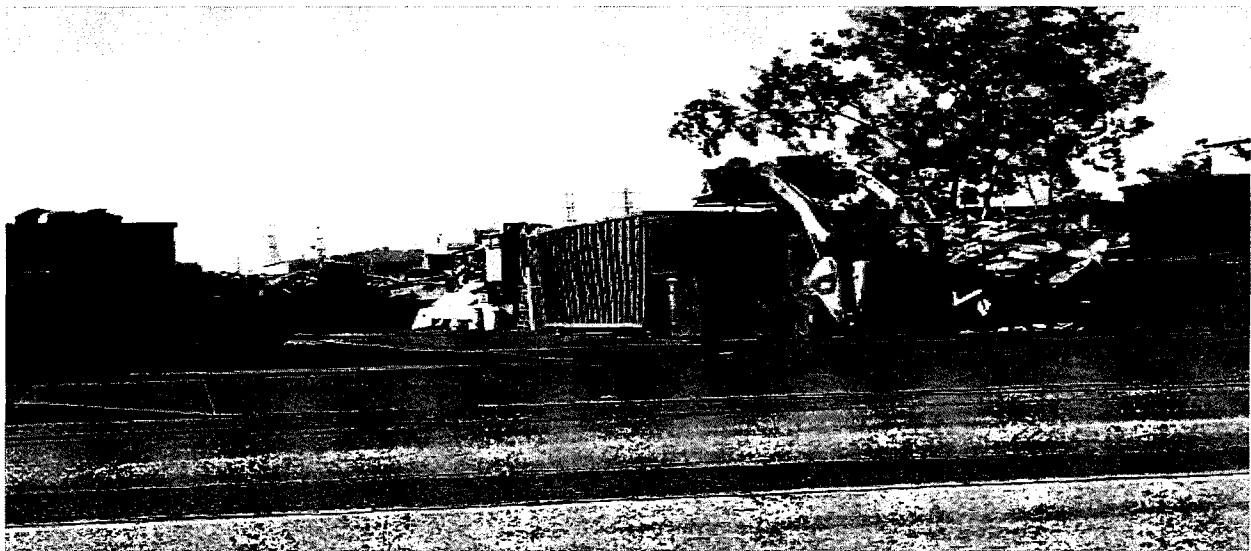
**Re: Notice of Violations and Intent to Sue Under the Federal Water Pollution Control Act**

Dear Mr. Mejia, Ms. Mejia, Mr. Mizrahi, Mr. Bouse, and Mr. Landis:

I am writing on behalf of East Yard Communities for Environmental Justice ("EYCEJ") with regard to horrendous violations of the Federal Water Pollution Control Act (the "Clean

Water Act” or “Act”) that EYCEJ believes are occurring at Green Land Metals, Inc. facility located at 6400 Bandini Blvd. in Commerce, California 90040 (“Facility”).

From Bandini Blvd, huge stacks of metal and other materials are visible are clearly stored outside and exposed to the elements. *When it rains, EYCEJ is informed and believes that contaminated storm water pours off these open-air stacks and piles and directly into Bandini Blvd., and then ultimately into the Los Angeles River, without ongoing, demonstrated compliance with stormwater requirements.*<sup>1</sup> **THIS SITUATION MUST BE REMEDIED IMMEDIATELY.** Below are some photographs of the Facility in the past few weeks taken from Bandini Blvd. Additionally, below you can see a Google earth image showing the huge stacks of metal stored on acres outside:



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<sup>1</sup> The information regarding which water body the Facility discharges to was obtained through research conducted with the City of Commerce’s Department of Public Works and investigation into the facility address and storm drains located in front of the Facility on Bandini Blvd. The drains may initially lead to Rio Hondo Channel, but eventually end up in the Los Angeles River. In the alternative, the Facility may discharge to the San Gabriel River.

EYCEJ is an environmental health and justice not for profit organization headquartered at 2317 Atlantic Bl., Commerce, California 90040. <http://eycej.org/about/contact-us/>. EYCEJ has members living in the community adjacent to the Facility and the Los Angeles River Watershed. EYCEJ and its members are deeply concerned with protecting the environment in and around their communities, including the Los Angeles River Watershed. It cares about the City of Commerce and the environment. ***You, as a recycling company, should too.*** This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Green Land").

This letter addresses Green Land's failure to comply with General Industrial Storm Water Permit. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit").<sup>2</sup> The WDID identification number for the Facility listed on documents submitted to the Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I023653. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Green Land is hereby placed on formal notice by EYCEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, EYCEJ intends to file suit in federal court against Green Land under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

The State Board approved Green Land's Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Green Land has certified that the Facility is classified under SIC Code 5093 ("scrap and waste recycling"). The Facility collects and discharges storm water from its 28,000 square foot industrial site. On information and belief, EYCEJ alleges that industrial activities at the site include glass and metal crushing, processing and transfer. ***Both the Green Land and Donald O.***

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<sup>2</sup> On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

***Smith 6400 and 6424 Bandini addresses and properties are used in a common operation.*** On information and belief, EYCEJ alleges that storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur and/or where materials are stored. The outfalls discharge into the County of Los Angeles or City of Commerce Flood Control District storm system, which discharges into the Los Angeles River.

The Regional Board has identified beneficial uses of the Los Angeles River and established water quality standards for it in the “Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties”, generally referred to as the Basin Plan. See [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml). The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation and commercial and sport fishing.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-16. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-11. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-16. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-8. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-9.

The Basin Plan also provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...” *Id.* at 3-8. The Basin Plan provides a Maximum Contaminant Level (“MCL”) for aluminum of 1 mg/L.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”), for copper of 0.013 mg/L (CMC) and for lead of 0.065 mg/L (CMC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).<sup>3</sup>

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>4</sup> The following benchmarks have been established: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; zinc – 0.20 mg/L; lead – 0.182 mg/L; copper – 0.025 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L.<sup>5</sup>

## **II. Alleged Violations of the Clean Water Act and the General Permit.**

### ***A. Discharges in Violation of the Permit not Subjected to BAT/BCT***

Green Land has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

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<sup>3</sup> These values for zinc, copper and lead are also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

<sup>4</sup> The Benchmark Values can be found at: [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) and <http://cwea.org/p3s/documents/multi-sectorrev.pdf>.

<sup>5</sup> Data shows median hardness at approximately 200 mg/L for the Los Angeles River Reach 2, which is the receiving water for Green Land’s discharges. [http://www.swrcb.ca.gov/water\\_issues/programs/tmdl/docs/303dlists2006/comments/jonathan\\_bishop\\_a.pdf](http://www.swrcb.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/comments/jonathan_bishop_a.pdf) Accordingly, since the benchmark level for zinc, lead and copper are hardness-dependent, the numbers listed here are based on a water hardness range of 175-200 mg/L [CaCO<sub>3</sub>].



Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. *See Baykeeper v. Int'l Metals Ekco, Ltd.*, 619 F.Supp.2d 936, 945 (C.D. Cal. 2009).

***Green Land's BMPs are virtually non-existent and it has continuously failed to test the mandatory parameters, as required under the General Permit. Huge piles of metal and other materials at the Facility are stored outdoors and uncovered. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the metals and materials, right onto Bandini Bl., and then into the Los Angeles River.***

***EYCEJ's investigation of the Facility indicates that Green Land has not implemented BAT and BCT at the Facility because storm water can freely flow over the metal and other materials discharging into the storm water system and eventually into the Los Angeles River. Green Land was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Attachment A below shows that there were numerous qualifying storm events during which the Facility could have sampled their storm water, as required under the General Permit. Thus, Green Land is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.***

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing pollutants in excess of the requirements constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Green Land is subject to penalties for violations of the General Permit and the Act since March 9, 2010.

***B. Failure to Sample and Analyze for Mandatory Parameters***

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id.* "All storm water discharge locations shall be sampled." *Id.* "Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled." *Id.*

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. A facility within SIC Code 5093, including Green Land, must analyze each of its storm water samples for zinc, copper, lead, iron, and aluminum. *Id.*, Table D (Sector N).

***EYCEJ’s review of Green Land’s storm water monitoring data indicates that you have failed to analyze for the mandatory parameters as well as for zinc, copper, lead, iron and aluminum, as required under SIC code 5093 in each and every storm water sampling event since the Facility opened. There are no records that Green Land has submitted any sampling reports to the Water Board, constituting individual violations of the General Permit.***

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Green Land is subject to penalties for violations of the General Permit and the Act since March 9, 2010.

***C. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

***There is no data indicating that Green Land has ever monitored their storm water or submitted Annual Reports, in accordance with the General Permit. When it rains, EYCEJ is informed and believes that contaminated storm water pours off the open-air metals and materials and directly onto Bandini Blvd., and then into the Los Angeles River. In the alternative, the Facility has failed to implement an appropriate program that shows whether or not they are in compliance.***

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Green Land is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since March 9, 2010.

***D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan***

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

***EYCEJ's visit to the Facility as well as the review Green Land's documents found at the Water Board indicate that Green Land has been operating with an inadequately developed and implemented SWPPP in violation of the requirements set forth above. Green Land has failed to create a SWPPP, as required under the General Permit. Green Land has also failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Anyone who sees this site can see that the SWPPP and BMPs are inadequate.***

Green Land has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 9, 2010, at the very latest, and will continue to be in violation every day that Green Land fails to prepare, implement, review, and update an effective

SWPPP. Green Land is subject to penalties for violations of the Order and the Act occurring since March 9, 2010.

***E. Failure to File Annual Reports***

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

***For the last five years, Green Land has failed to submit and certify any Annual Reports showing that the Facility was in compliance with the General Permit. Consequently, Green Land has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time Green Land failed to submit. Green Land is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least March 9, 2010.***

**III. Persons Responsible for the Violations.**

EYCEJ puts Green Land, Sergio Mejia, Susana Mejia, Nathan Mizrahi, Robert Bouse, and John Landis on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, EYCEJ puts Green Land on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of EYCEJ is as follows:

Mark Lopez  
EYCEJ  
2317 Atlantic Bl.  
Commerce, CA 90040  
323-263-2113

**V. Counsel.**

EYCEJ has retained counsel to represent it in this matter. Please direct all communications to:

Gideon Kracov  
Law Office of Gideon Kracov  
801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017

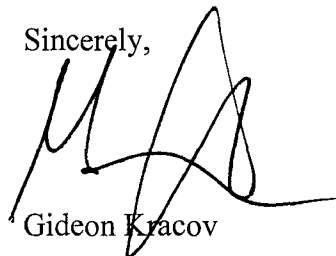
gk@gideonlaw.net  
213-629-2071

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Green Land to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, EYCEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

EYCEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. EYCEJ intends to file a citizen suit under Section 505(a) of the Act against Green Land and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, EYCEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, EYCEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. EYCEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gideon Kracov', with a stylized, cursive script.

Gideon Kracov

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**ATTACHMENT A**  
 Rain Dates, Green Land Metals, Commerce, California

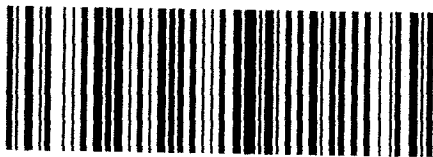
2/5/2010	3/27/2011	2/8/2013
2/6/2010	5/17/2011	2/19/2013
2/15/2010	10/4/2011	3/8/2013
2/19/2010	10/5/2011	5/6/2013
2/23/2010	11/4/2011	5/7/2013
2/27/2010	11/6/2011	11/29/2013
3/6/2010	11/12/2011	12/19/2013
4/5/2010	11/20/2011	2/6/2014
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12/17/2010	2/27/2012	4/2/2014
12/18/2010	3/17/2012	4/25/2014
12/19/2010	3/18/2012	11/30/2014
12/20/2010	3/25/2012	12/2/2014
12/21/2010	4/10/2012	12/3/2014
12/22/2010	4/11/2012	12/12/2014
12/23/2010	4/13/2012	12/17/2014
12/24/2010	4/25/2012	1/10/2015
12/26/2010	4/26/2012	1/11/2015
12/27/2010	7/25/2012	1/12/2015
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2/19/2011	12/3/2012	1/23/2015
2/25/2011	12/13/2010	1/24/2015
2/26/2011	12/24/2012	1/26/2015
3/20/2011	12/26/2012	1/31/2015
3/21/2011	12/29/2012	2/3/2015
3/23/2011	1/24/2013	2/6/2015
3/25/2011	1/25/2013	2/7/2015

2/8/2015	2/22/2015
2/9/2015	2/23/2015
2/10/2015	3/2/2015
2/11/2015	
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MAR 17 2015

FROM: GIDEON KRACOV ATTY AT LAW  
CARR: United States Postal Service  
TRK#: 70142120000360242200  
RCVD: 3/17/2015 1019

TO: Hebb, Kevin M. (ENRD)  
PH: 202-373-7550  
BDG: PH  
RM:  
PCS: 1



9999000065706

RTE:  
MSC: PH2121  
Hebb, Kevin M. (ENRD)

**GIDEON KRACOV**

ATTORNEY AT LAW  
801 S. GRAND AVENUE, 11TH FLOOR  
LOS ANGELES, CA 90017

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Citizen Suit Coordinator  
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Law and Policy Section  
PO Box 7415  
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Washington, DC 20044-7415